No. 25-573

IN THE
Supreme Court of the United States

PRESIDENT DONALD J. TRUMP,
Petitioner,

v.

E. JEAN CARROLL,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

AMICUS CURIAE BRIEF OF IOWA AND 10 OTHER STATES IN SUPPORT OF PETITIONER

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INTERESTS OF AMICUS CURIAE[1]

States have a vital interest as co-sovereigns in ensuring that federal courts neutrally apply rules. Citizens of every State are subject to federal courts' jurisdictions, so the rule of law requires neutral adjudication of issues according to, among other bodies, the Federal Rules of Evidence.

Neutral, predictable application of the Federal Rules is essential to preserving public confidence that justice is administered evenhandedly, without regard to the identity or prominence of the parties. When federal courts abandon longstanding evidentiary safeguards in favor of outcome-driven exceptions, the fairness of civil and criminal proceedings is undermined nationwide. The *Amici* States prosecute and defend thousands of cases each year in federal court under those same rules; any decision that dilutes Rule 403's protection against unduly prejudicial evidence or that transforms Rules 413 and 415 into a license for unrestricted propensity testimony threatens the integrity of trials in every jurisdiction.

The Second Circuit's decision here illustrates the danger of selective relaxation of evidentiary standards. By upholding the admission of decades-old, uncorroborated allegations with little or no regard for timeliness or prejudice, and by simultaneously excluding evidence probative of the defendant's state of mind on the issue of actual malice, the panel effectively cre-

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[1] Pursuant to Rule 37.2, amici provided timely notice of their intent to file this brief to all parties.

ated a one-sided evidentiary playing field. Such asymmetrical application of the Rules cannot be reconciled with the text of Rule 403, which requires balancing in all cases, nor with this Court's repeated insistence that exceptions to foundational evidentiary principles be construed narrowly and applied consistently.

Amici States are deeply concerned that lower courts may read the decision below as permission to bend the Rules whenever a case attracts public attention or involves politically charged allegations, eroding the principle that the same procedural protections apply equally to every litigant.

INTRODUCTION AND SUMMARY OF ARGUMENT

The petition in this case presents three straightforward but profoundly important questions concerning the Federal Rules of Evidence that this Court has never squarely resolved: (1) whether Rules 413 and 415 silently repeal Rule 403's mandatory balancing of probative value against unfair prejudice—including the factor of temporal remoteness—whenever a plaintiff levels a civil sexual-assault allegation; (2) whether Rule 413(d)'s careful limitation to evidence that the defendant committed a "crime" of "sexual assault" can be satisfied by decades-old conduct that was neither criminal at the time nor involved any actual or attempted sexual assault; and (3) whether Rule 404(b)(2) authorizes the admission of prior-act evidence for "corroboration" or "modus operandi" when

the only logical relevance of the evidence is the forbidden inference that the defendant acted in conformity with bad character on the occasion in question.

The Second Circuit answered each question in the affirmative, deepening acknowledged circuit conflicts and creating a roadmap for the selective suspension of foundational evidentiary protections in high-profile cases. Certiorari is warranted to restore uniformity and neutrality to the application of the Federal Rules of Evidence.

As Judge Menashi's dissental observed, the panel opinion "embraced a series of anomalous holdings" that cannot be reconciled with the text of the Rules or with decisions of this Court and other circuits. By treating Rules 413 and 415 as overriding Rule 403's requirement to weigh remoteness and cumulative prejudice, the panel authorized the admission of inflammatory testimony about an alleged encounter from the 1970s—testimony that carried vanishingly slight probative value yet guaranteed that the trial would be decided on passion rather than reason.

By reading Rule 413(d) to encompass conduct that was neither a crime nor a sexual assault when it purportedly occurred, the panel further eroded the narrow congressional exception to the ban on propensity evidence. And by blessing the use of prior-act evidence for "corroboration" without requiring a genuine non-propensity purpose under Rule 404(b)(2), the panel effectively licensed what Rule 404(a) has forbidden for more than a century: evidence that the defendant is a bad person who likely acted badly again.

The Second Circuit's errors were compounded by the simultaneous exclusion of evidence directly relevant to the defendant's state of mind on the issue of actual malice—an exclusion the panel opinion "neglected to justify." Pet. App. 201A (Menashi, J., dissenting from denial of rehearing en banc). Here, "actual malice" means that President Trump "made the statement knowing that it was false or acted in reckless disregard of whether or not it was true." Pet.App. 202A–203A (citation omitted). The result was a defamation trial in which the jury heard a parade of propensity evidence designed to portray the defendant as a sexual predator while being shielded from evidence that could have shown that the plaintiff's accusation was part of a coordinated political attack.

The combined effect transformed a defamation claim governed by the exacting actual-malice standard of *New York Times Co. v. Sullivan* into a referendum on the defendant's character. *See* Pet. App. 203A (citing *New York Times Co. v. Sullivan*, 376 U.S. 254, 280 (1964)). Lower courts are now on notice that, at least within the Second Circuit, the ordinary constraints of the Federal Rules may be relaxed when the case is sensational.

It is hard to imagine a court allowing the Federal Rules of Evidence to be stretched beyond the breaking point as they were here—but for the Defendant being President Trump. The district court instead should have allowed in or excluded evidence under Rules 403, 404(b), and 413–15 as it would have for any other litigant. Just as President Trump is neither above the

law nor entitled to special treatment for actions alleged to have been taken outside of his tenure as President—nor are claims against him entitled to special solicitude.

Amici States urge the Court to grant certiorari and reverse. The Federal Rules of Evidence were deliberately drafted to ensure that every litigant—regardless of public prominence or controversy—receives a trial decided on admissible evidence rather than prejudice or notoriety. The decision below threatens that guarantee by creating Second Circuit-specific exceptions that swallow the rule against propensity evidence and undermine Rule 403's universal balancing command. Only this Court can resolve the resulting circuit splits and reaffirm that the same rules apply in every federal courtroom, to every defendant, in every case.

ARGUMENT

I. The Second Circuit's Opinion is a Striking and Consequential Departure from the Neutral, Uniform Application of the Federal Rules of Evidence.

The panel opinion endorses a series of "anomalous holdings" that together eviscerate foundational protections against character and propensity evidence while insulating the jury from vital probative evidence. Pet. App. 201A. Judge Menashi's dissent from the denial of rehearing en banc correctly identifies the core problem: the panel "embraced a series of anomalous holdings to affirm the judgment of the district

court" that "conflict with controlling precedents and produced a judgment that cannot be justified under the rules of evidence that apply as a matter of course in all other cases." Pet. App. 201A–02A.

In every other courtroom in the United States—indeed, in every other case in the Second Circuit itself—the Federal Rules of Evidence are understood to impose rigorous, neutral constraints on the admission of prior-act evidence. Here, those constraints were relaxed or ignored entirely, producing a trial that turned on inflammatory propensity testimony rather than admissible proof. The three questions presented are not academic quibbles; they are three facets of a single, urgent problem: the selective suspension of evidentiary neutrality in a high-profile case.

A. Federal Rules of Evidence 413 and 415 Cannot Override Rule 403's Mandatory Balancing.

The primary error below lies in the panel's treatment of Federal Rules of Evidence 413 and 415 as effectively repealing Rule 403's requirement that courts balance probative value against the danger of unfair prejudice in every case. Rule 403's text is unequivocal: "The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of . . . unfair prejudice." Fed. R. Evid. 403. Nothing in Rules 413, 414 or 415 says otherwise.

That led the panel to rely on a sleight of hand—the court "interpreted Rule 415 to override the requirement of Rule 403 to balance the probative value

of evidence against its prejudicial effect, permitting stale witness testimony about a brief encounter that allegedly occurred forty-five years earlier." Pet. App. 202A; *see also* Pet. App. 221A–22A.

That testimony—describing an alleged incident from the 1970s—was admitted despite its staleness, lack of corroboration, and potential to prejudice the jury. Allowing the evidence into trial created a split with courts that have held Rules 413, 414, and 415 merely make certain propensity evidence eligible for the balancing test that Rule 403 always requires. Certiorari is necessary to resolve the deepening circuit conflict and to reaffirm that Rule 403's command is universal and mandatory—no exceptions, no overrides, no special rules for sensational cases.

Before delving deep into the panel's error, it is important to recognize these Rules' history. Congress enacted Rules 413–415 as part of the Violent Crime Control and Law Enforcement Act of 1994. Pub. L. No. 103-322, § 320935, 108 Stat. 1796, 2135–40. Those rules create a limited exception to the "deeply rooted" common-law prohibition on propensity evidence. *See Michelson v. United States*, 335 U.S. 469, 475–76 (1948).

But those exceptions do not repeal Rule 403. To the contrary, the statutory history repeatedly emphasizes that evidence admitted under the new rules "must [] be weighed under Rule 403." 140 Cong. Rec. 24,799 (1994) (statement of Rep. Molinari). Every circuit to address the issue has held that Rules 413–415

merely make some propensity evidence eligible for admission; they do not displace Rule 403's mandatory, case-by-case balancing. Indeed, many circuits held that those Rules are constitutional because of the limits that Rule 403 imposes. *See*, *e.g.*, *United States v. LeMay*, 260 F.3d 1018, 1026–27 (9th Cir. 2001); *United States v. Guardia*, 135 F.3d 1326, 1329–31 (10th Cir. 1998); *United States v. Mound*, 149 F.3d 799, 800–02 (8th Cir. 1998).

Temporal remoteness is a central factor in that Rule 403 balancing. And since their enactment, this Court has not weighed in on the appropriate application of Rules 413–415 and their interaction with Rule 403. Meanwhile, multiple circuits have required district courts to give meaningful weight to the age of prior-act evidence offered under Rules 413–415, and they have reversed or vacated convictions when courts failed to do so. *See*, *e.g.*, *United States v. Rogers*, 587 F.3d 816, 822–23 (7th Cir. 2009) (vacating where court failed to "fully appreciate[] the finely tuned balancing that the Rules require").

As Judge Menashi highlighted, in this regard the Second Circuit broke ranks with its sister circuits. Pet. App. 221A ("In fact, there is every reason to believe that testimony in this case would have failed the standard Rule 403 analysis if either the district court or the appellate panel had been willing to apply it."). The testimony here could not be corroborated because the testifier could not identify a time or place where the event approximately 45 years ago occurred. Pet. App. 221A–22A. In effect, the panel "interpreted Rule

415 to override the requirement of Rule 403 to balance the probative value of evidence against its prejudicial effect, permitting stale witness testimony about a brief encounter that allegedly occurred forty-five years earlier." Pet. App. 201A. The panel's approach treats temporal remoteness as irrelevant unless the prior act is literally older than the defendant himself—an absurdity that no other circuit has endorsed.

Indeed, the panel compounded its Rule 403 error by reading Rule 413(d)'s carefully cabined exception to the ban on propensity evidence as a blank check. As Judge Menashi observed, the panel "read Rule 413(d), which authorizes the admission of evidence that the defendant committed a 'crime' of 'sexual assault,' to allow testimony about prior acts that were neither crimes nor sexual assaults." Pet. App. 202A. Conduct that was not criminal when it occurred, and that did not meet any statutory definition of sexual assault, falls squarely outside the congressional authorization. By admitting such evidence anyway, the district court (and the panel) transformed a limited, textually grounded exception into an open-ended invitation to litigate every uncorroborated allegation from a defendant's distant past.

The consequences of the Second Circuit's new rule are profound. Evidence that is decades old is inherently less reliable: "[d]elay can lead to a less accurate outcome as witnesses become unavailable and memories fade." *New York v. Hill*, 528 U.S. 110, 117 (2000) That leaves defendants deprived of any meaningful ability to rebut the accusation. Yet such evidence is

maximally prejudicial, inviting the jury to punish the defendant for who someone says he is, without corroboration, rather than what he did in the charged incident. That is precisely why Rule 403 exists, and why Congress insisted that it continue to apply. By treating Rules 413, 414, and 415 as trumping Rule 403, the decision below creates a Second Circuit-specific regime in which civil plaintiffs alleging sexual assault may introduce uncorroborated allegations from the distant past with impunity. Forum shopping and inconsistent verdicts will inevitably follow.

To go one step farther: Rule 403 balancing is more important in this context because of the risk of unfair prejudice from propensity evidence. *See* Pet.App. 218A ("We and other courts have emphasized that the Rule 403 analysis is especially important—and, if anything, should be *more* rigorous—when evidence is offered pursuant to Rules 413-15."). Look to the facts here, where the "district court admitted testimony about events that occurred as much as forty-five years before the testimony was delivered at trial—over objections that those events were too remote under Rule 403." Pet.App. 220A. By failing to address those concerns, the panel endorsed a "novel exception to Rule 403" and prejudiced the defendant. Pet.App. 220A.

To be sure, Rules 413, 414, and 415 allow older evidence to be presented before a jury that would otherwise be barred by Rule 403. But here, the district court and panel declined to follow the Second Circuit's own precedents to neutrally apply their own rules. And that creates a split with other circuits that likely

would have excluded the evidence here because the defendant is President Trump.

B. *New York Times Co. v. Sullivan* Remains Binding Law.

To impose liability on President Trump for defamation, the jury here had to find that he had spoken with "actual malice." *New York Times Co.*, 376 U.S. at 280. Other courts addressing high profile figures enmeshed in defamation suits failed to find such malice existed when the challenged utterances were "non-actionable expression[s] of opinion." Pet. App. 203A n. 2 (collecting cases). Here, President Trump was not allowed to introduce evidence or question Plaintiff about, for example, her own testimony "that she was disinclined to bring a lawsuit until a political opponent of President Trump had 'crystallized' the stakes for her." Pet. App. 203A.

To the extent there is any concern that this legal witch hunt against President Trump was highly politicized, Plaintiff admitted that "one of the largest donors to the Democratic Party—a vocal critic of President Trump and his political policies who had been funding groups to create a bulwark against Mr. Trump's agenda—was financing the nonprofit that paid her legal fees." Pet. App. 203A–204A (cleaned up).

Reasonable jurists could conclude that Plaintiff's efforts, supporters, and inconsistencies in the stories and evidence she sought to produce could "make[] it more likely that President Trump believed that the

lawsuit had been concocted by his political opposition—and therefore that he was not speaking with actual malice when he called it a hoax." Pet. App. 204A.

Despite all the well-recounted reasons for the district court to have ruled otherwise gathered by Judge Menashi's dissental, the district court "excluded the evidence and limited cross-examination" on this vital topic. Pet. App. 205A. The panel compounded the error by affirming the judgment "without addressing the relevance of the excluded evidence to the issues of actual malice or President Trump's truth defense." Pet. App. 205A.

Reasonable jurists can disagree about whether *New York Times Co. v. Sullivan* properly reflects the original meaning of the First Amendment, but the Second Circuit may not ignore this Court's precedents. *See generally* Pet. App. 1A–63A (omitting citation to *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964)); Pet. App. 202A–207A; *see also McKee v. Cosby*, 586 U.S. 1172, 1172 (2019) (Thomas, J., concurring in denial of certiorari). The actual malice standard raises "the plaintiff's burden of proof to an almost impossible level." *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749, 771 (1985) (White, J., concurring in the judgment). Some have compared that high bar to "an effective immunity from liability." *Berisha v. Lawson*, 141 S.Ct. 2424, 2428 (2021) (Thomas, J., dissenting from denial of certiorari). Regardless of the criticisms of that precedent, there is no argument it should apply equally to President Trump as to any other defamation defendant.

And whether this Court wishes to revisit that precedent, that is a separate question from whether it would be prudent to do so here. *See Gundy v. United States*, 588 U.S. 128, 149 (2019) (Alito, J., concurring in judgment) ("If a majority of this Court were willing to reconsider the approach we have taken for the past 84 years, I would support that effort. But because a majority is not willing to do that, it would be freakish to single out the provision at issue here for special treatment.").

Applying *New York Times Co. v. Sullivan* here, "the evidence of the political organization behind the lawsuit would have made it more difficult to conclude that President Trump subjectively 'entertained serious doubts as to the truth' of his description of the lawsuit as a hoax that was part of a larger organized political effort." Pet. App. 207A (quoting *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968)). Excluding the evidence opened lines of argumentation to Plaintiff that could have prejudiced the judgment. Pet. App. 207A. While the Second Circuit declined to "reconsider this outcome-determinative question *en banc*," it is worth this Court's consideration. Pet.App. 207A.

This Court will assuredly hold President Trump and his interlocutors to the same requirements that all parties are treated equally under binding Supreme Court precedent. Here, the Second Circuit has departed from this Court's precedents. That warrants Supreme Court review.

CONCLUSION

The Court should grant the petition for certiorari.

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Respectfully submitted,

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